

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Amendment of Section 73.202(b))	
FM Table of Allotments,)	MB Docket No. 02-382
FM Broadcast Stations.)	RM-10615
(Bridgeton and Pennsauken, New Jersey))	

NOTICE OF PROPOSED RULEMAKING

Adopted: December 13, 2002

Released: December 16, 2002

Comments Date: February 10, 2003

Reply comments Date: February 25, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed on behalf of Cohanzick Broadcasting Corporation, licensee of Station WSNJ-FM and New Jersey Radio Partners, Inc., ("Petitioners"),¹ proposing the substitution of Channel 300A for Channel 299B at Bridgeton, New Jersey, and the reallocation of Channel 300A from Bridgeton to Pennsauken, New Jersey, as the community's first local transmission service, and the modification of the license for Station WSNJ-FM to reflect the changes.²

2. Petitioners filed this proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.³ In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.⁴

3. In support of the petition, Petitioners state that Channel 300A can be allotted at Pennsauken in accordance with Section 73.207 of the rules, and it will place a 70dBu to the community from the proposed reference point. The allotment will provide the community with its first local aural transmission service without depriving Bridgeton, 1990 U.S. Census population, 18,942 persons, of aural transmission

¹ New Jersey Radio Partners, LLC is the assignee of Station WSNJ(FM) pursuant to an application for assignment of license (File No. BALH-200201002AAN) granted on February 14, 2002.

² This proposal was originally filed as an amended petition in MM Docket No. 02-26. That docket has been terminated and this one simultaneously initiated to consider this amended proposal as a new petition for rule making.

³ See *Change of Community R&O*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

⁴ The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988).

service, leaving behind an AM and a NCE FM station.⁵ It also states that it will eliminate short spacings to Stations WGTU(FM) Channel 299B, Gettysburg, Pennsylvania, Station WBYN(FM), Channel 298B, Boyertown, Pennsylvania, Station WFSI(FM) Channel 300B, Annapolis, Maryland, and Station WPUR(FM) Channel 297B1, Atlantic City, Maryland. In addition, it claims that the relocation will eliminate sizeable overlap areas totaling 4,747 square kilometers caused by these short spacings, and bring interference-free service to 2,142,046. Finally, they claim that the relocation of the station to Pennsauken will result in a net increase in population to 1,283,520 persons able to receive a 60 dBu signal from the station, although there will be a decrease in the area served. The loss area will continue to be well served by more than five aural services.

4. Petitioners also note that Pennsauken is 8.3 kilometers from Philadelphia, and within the Philadelphia Urbanized Area. It has a 2000 U.S. Census population of 35,737 persons. Petitioners provide a showing that the community is an independent community deserving of a first local service preference. This showing is based on the factors enumerated in *Faye and Richard Tuck*.⁶ We seek comment on this showing.

5. We note that Petitioners have failed to pledge to file the necessary applications to effectuate their request or to construct the facilities if their applications are granted. Petitioners are requested to do so in their comments, and to include a continuing expression of interest in the rulemaking petition.

6. We believe that this proposal warrants consideration because it could eliminate four short spacings, could provide a large community with its first local service and could give an additional aural service to over one million persons. An engineering analysis shows that Channel 300A can be allotted at Pennsauken at a site 6.1 kilometers (3.8 miles) northeast of the community.⁷

7. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Bridgeton, New Jersey	299B		---
Pennsauken, New Jersey	---		300A

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

9. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before February 10, 2003, and reply comments on or before February 25, 2003, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioners' counsel, as follows:

Marnie K. Sarver, Esq.
Wiley Rein & Fielding, LLP

Mark N. Lipp, Esq.
J. Thomas Nolan, Esq.

⁵ Stations WSNJ-AM and WNJB(FM) will remain in Bridgeton.

⁶ 3 FCC Rcd 5374 (1988).

⁷ Channel 300A can be allotted at Pennsauken at coordinates 40-00-12 NL and 75-01-19 WL.

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10. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁸

12. For further information concerning this proceeding, contact Victoria M. McCauley (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioners constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁸ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.